In the Supreme Court
OF THE
United States

OCTOBER TERM, 1940

No. 589

A. A. NEWHOUSE, J. R. MASON and MARY E. MORRIS,
Petitioners,

vs.

CORCORAN IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

RALPH R. ELTSE,
American Trust Building, Berkeley, California,
W. COBURN COOK,
Berg Building, Turlock, California,
Attorneys for Petitioners.

GEORGE CLARK,
American Trust Building, Berkeley, California,
Of Counsel.

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to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Come now the petitioners above named and respectfully pray that a writ of certiorari issue to review the judgment entered September 5, 1940 against them by the United States Circuit Court of Appeals for the Ninth Circuit. (R. 366, 367.) The judgment affirmed

an interlocutory decree of the United States Distri Court for the Southern District of California, Sout ern Division, dated May 22, 1939. (R. 85 to 95.) Th interlocutory decree confirmed a plan of compositi of the bonded indebtedness of respondent, Corcora Irrigation District.

Petition for rehearing was denied by the Circu Court of Appeals on October 15, 1940. (R. 367, 368

Petitioners hold $44,000.00 in bonds of Corcora Irrigation District with all interest coupons represen ing interest accruing after July 1, 1933. (The claims, R. 53, 55 and 47.) (Stipulation, R. 258.) The bonds are affected by the plan of composition.

The district was formed under California law.

Every point relied on was pleaded. (R. 16 to 32.)

SUMMARY STATEMENT OF THE CASE.

The composition petition was filed by the irrigati district on September 12, 1938 (R. 2 to 15) und Section 83 of the Bankruptcy Act, approved Augu 16, 1937.

11 U. S. C. A., Sec. 401;
50 Stats. at L. 653, Chap. 657.

As shown by the petition (R. 2 to 15), the bond debt of the district was $733,000.00 with interest 6% per annum from July 1, 1933. The plan requir acceptance of 75% of the principal of each bond f the bond and the interest due thereon and that t cash should be provided in part by the district a

in part by a loan of $484,500.00 from the Reconstruction Finance Corporation, and that the R.F.C. would receive new bonds of the district for its advances. (See undenied allegations of Petition, including Exhibit A, R. 2 to 15.)

The district contains 51,600 acres. (R. 121-124.) We ask the court to bear in mind that the per acre bonded debt of Corcoran Irrigation District was low; *also that the landowners had their own deep well systems which improvement alone had cost more than the bond burden which it is now proposed shall be left on this district.*

When it is noted that the district had in its treasury when the petition was filed about $150,000.00 above what was carried as a rule for future needs and that that money could have been held as surplus if not applied on the $484,500.00, the court will see what the per acre debt of this district is to be as a result of this settlement. Disregarding the cash the bond debt is to be cut to $9.389 an acre, while the market value of the land at depression valuation is $87.50 an acre. The new debt bears interest at 4%—an annual interest charge of a little less than 38¢ an acre.

The case presents two questions of general importance: First, it is necessary for the court to determine the meaning of the requirement in Section 83(e) of the Bankruptcy Act that a plan of composition shall be "fair and equitable"; whether it means one thing in Section 77B and something vastly different in Section 83(e). Petitioners contend that this court ruled in *Case v. Los Angeles Products Co.*, 308 U. S. 106, 60 S. Ct. 1, 84 L. ed. ....., that the words

"fair and equitable" contained in Section 77B came into the Bankruptcy Act after having their meaning fixed in equity practice and that they prevent confirming a plan of composition which compels surrender by creditors of any substantial part of their security. They say that the words have substantially the same meaning elsewhere in the same act and that they prohibit composition which requires surrender of about nine-tenths of the security for irrigation district bonds. Secondly, the court must determine whether Section 83 is not unconstitutional in its application, when the plan confirmed by the court scales down the bonded debt of an irrigation district (one of the taxing agencies named in Sections 81 to 83 of the act) without impairing the burden on the land of the bonds of an overlapping school district (another taxing agency named in Sections 81 to 83) in the event of the law of the State makes the tax liens of the two agencies equal. Further is not the act unconstitutional in its application if the plan requires reduction of the bonded indebtedness because of the existence of private mortgages on the district's lands? We contend that both the 5th amendment and the bankruptcy clause are violated.

There are other vital points requiring this court's consideration but the foregoing points show the grave injustice of this case.

As will appear from evidence (which is brief and wholly uncontradicted) the plan reduced the bonded indebtedness of respondent Corcoran Irrigation District to about one-tenth the value of the security behind the bonds. As we shall show the law of California

makes bonds of an irrigation district perfect investment for savings banks and trusts *when the equity in the security is but 40%*. Such is the state standard of highest security. The law of California justifies a bonded debt of this district of this high type nearly six times greater than $484,500.00.

We contend that the words "fair and equitable" prohibit in a ten-man or fifty-man or a thousand-man irrigation district, the indirect giving to the landowners, in whose behalf composition is sought, the security placed behind irrigation district bonds. Those words prevent confiscation under the guise of bankruptcy—the taking from creditors security previously vested in them. *Those words obviously require that the plan shall call merely for delay in payment when the security is ample.* Of controlling significance is the California law for measuring security behind irrigation district bonds which shall constitute investments for savings banks and trusts.

The debt of this district was thus reduced while leaving unimpaired the liens of bonds overlapping taxing agencies, which liens were but equal to the irrigation district bond lien.

We shall point to two cases under Section 77B (which section contains the requirement that a plan shall be "fair and equitable"), in each of which a Circuit Court of Appeals held invalid a plan which took from secured creditors but fifty per cent of the value of their security.

It is perfectly obvious that the District Court did not consider this district insolvent. The opinion justi-

fies the application of Section 83 to a case of inability to meet debts as they mature. (R. 59.) Nor is there the slightest suggestion in the opinion of the Circuit Court of Appeals that this district was truly insolvent but in effect that opinion is that we have no right to apply the requirement of "fair and equitable" because the district is not a private corporation. (R. 364.)

But we are entitled to invoke our right to promised security as against any argument that the landowners may make enforcement of security difficult. Through the district, the landowners are in a court having equitable powers and which has through the use of the words "fair and equitable", been given power to protect. We are no longer in a state court where we can be met with a contention commonly made that mandamus is a discretionary remedy and the writ not one of absolute right.

The Irrigation District Act of California has for years provided for refunding bonds, for delay when the immediate debt burden is too great. In fact the bonds to be taken by the R.F.C. are refunding bonds and all that a debtor is entitled to who needs but delay is delay.

We concede that the combination of low prices following 1929, the maturing of principal on the bonds of this district and the fact the district was making various capital investments caused the district to default on its bonds. But that did not prove this district was insolvent or entitled to avoid paying its bonds. Extension of time is common to compositions.

The trial court itself suggested that this case should not be closed without evidence as to the value of the land which secured these bonds. We, the petitioners, provided that evidence and it is not contradicted.

The recurring annual tax liens which secure an irrigation district bond are no more changeable than are the provisions of mortgage security.

Shouse v. Quinley, 3 Cal. (2d) 357, 37 Pac. (2d) 189, 45 Pac. (2d) 701.

The law reads as to payments on bonds:

"* * * and all the land within the district shall be and remain liable to be assessed for such payments as herein provided."

Sec. 33, Cal. Stats. 1917, p. 764.

(Herein we shall refer to the sections of the California Irrigation District as amended. The entire act is set out as Act 3854 in

Deering's General Laws of California, Vol. I, p. 1792, edition of 1937.)

Note the following late opinion:

"In our opinion, the statute was intended to secure the bonds by the proceeds of the land in the district. It is true that the bonds themselves are not a lien on the land. But the assessment is a lien (sec. 40), and the district is required to collect the assessment or sell the land. Land coming into other private ownership is again liable for assessments (sec. 33), and land in possession of the district should, if possible, be sold again, so that it may produce the required revenue."

Provident Land Corp. v. Zumwalt, 12 Cal. (2d) 365, at p. 374.

In points 5 to 8 the Supreme Court of California ruled in the last case that land taken by the district at tax sale must, while held for resale, be used to provide funds to pay the district's bonds, although part of the income could be used for operating expenses.

In Point 8 in the following case, it is stated as to the land:

> "It can never be permanently released from the obligation of the bonds until they are paid."
> *Provident Land Corp. v. Zumwalt,* 12 Cal. (2d) 365 at p. 378, 85 Pac. (2d) 1116.

So a plan should not be confirmed without regard to this security.

Section 83 refers to "taxing agencies". They are all agencies of the identical sovereign performing one or more public functions. It may well be said that a state has the right at any time to make its tax laws more effective. A court hardly wants the agent before it with a tin cup in one hand and a club in the other. And it hardly appeals to a high sense of justice to make the creditors one of these agencies bear all the loss when the areas of the two overlap.

The bonds are general obligations—not limited as in case of improvement assessment bonds.

> *Farwell v. San Jacinto, etc. Irr. Dist.,* 49 Cal. App. 167, 192 Pac. 1034;
> *Bates v. McHenry,* 123 Cal. App. 123, 10 Pac. (2d) 1038.

What in all fairness did those landowners tell the bondholders who gave them the money to improve

their land? Obviously that the highest lien known to the law would secure the bonds.

The impelling force of the *Los Angeles Lumber Products Co.* case is its recognition that bankruptcy is not a scheme for passing security vested in a creditor back to a debtor. It brings composition law with the ruling that this great bankruptcy power is subject to the 5th amendment and does not permit taking the creditor's security.

> *Louisville Joint Stock Land Co. v. Radford,* 295 U. S. 555, 79 L. ed. 1593.

There was no intent to abandon the latter case in the following case. The court merely held, in effect, that bankruptcy permitted reasonable adjustment of the rights of a secured creditor and was broader than police power—not that the debtor must be rehabilitated by a gift to him of the security for his debt. The very conclusion of the last named case which upheld the modified Frazier-Lemke Act (Section 75(f)) is:

> "For the reasons stated we are of the opinion that the provisions of subsection (s) make no unreasonable modification of the mortgagee's rights and hence are valid."
>
> *Wright v. Mountain Trust Bank,* 300 U. S. 440, 81 L. ed. 736.

To be fair and equitable and for the best interests of the creditors, the plan presented must not confiscate. Congress put that barrier in the law.

> "Accordingly the fact that the vast majority of the security holders have approved the plan

is not the test of whether the plan is a fair and equitable one."

Case v. Los Angeles Lumber Products Co., 308 U. S. 106, at p. 114, 60 S. Ct. 1, 84 L. ed. .....

"The words 'fair and equitable' as used in sec. 77B(f) are words of art which prior to the advent of sec. 77B had acquired a fixed meaning through judicial interpretations in the field of equity receivership reorganizations."

Id. p. 115.

The court referred to the *Boyd* case.

One part of the bankruptcy act is to be treated as in harmony with the balance of it.

"As a general rule where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, excepting as a different purpose is plainly shown."

United States v. Jefferson Elec. Mfg. Co., 291 U. S. 386, 396, 78 L. ed. 859.

"It is obvious therefore that in order to carry into execution the intention of the legislative department of the government these various laws on the same subject matter must be taken together and construed in connection with each other."

Converse v. United States, 21 How. 463, 16 L. ed. 192.

Like terms in related statutes are presumed to have the same meaning.

Kilgore v. Swindle, 219 Ala. 378, 122 So. 333.

The *Boyd* case involved reorganizing a great railroad —a matter of grave difficulty. Neither is foreclosure of a railroad as simple as selling assets of an ordinary corporation. The power to fix an upset price afforded some protection. Section 77B was designed to improve the equitable remedy, to save more for creditors. The opinion of the Circuit Court of Appeals correctly refers to the fact that we are not dealing with a private debtor. That is correct. But it is also correct that we are dealing with a bankruptcy law which for all practical purposes treats the group owning the vast or petty area in an irrigation district as a corporate entity capable of bankruptcy (*Chicot Drainage District v. Baxter State Bank,* 308 U. S. 371, 84 L. ed. .....) and it is but common honesty to hold that Section 83 was not intended to be and could not have been made to be a shield for destroying security. The same purpose runs through Section 77, the railroad reorganization act; Section 77B, and Section 83. The possibility that the debtor's affairs are so complicated that the remedies at law or in equity present difficulties is absolutely no defense when the debtor seeks relief in a court of equitable powers created for the very purpose of avoiding the loss that would result from an ordinary remedy. It is of course settled that a court of bankruptcy deals equitably with every situation not covered by a bankruptcy provision. And here we have thrust into the

very act the words which say to the defaulting landowners: You must not claim relief and excuse a low offer by the trouble you could cause in enforcing security you promised. The state is virtually acting here through a "taxing agency". (Section 81.) It has added its consent. (*U. S. v. Bekins,* 304 U. S. 27, 82 L. ed. 1137.) Are we to assume the two sovereigns agreed to jurisdiction of the bankruptcy court to permit confiscation of security vested in a creditor?

The footnotes, page 120, *Los Angeles Products Co.* case explain that under Section 12, the bankrupt proposes the settlement and that the court may approve of the plan if "for the best interests of the creditors" but that Section 77B added the requirement of "fair and equitable". This court further said:

> "The District Court's further finding that if the bondholders were to foreclose now they would receive substantially less than the appraised value of the assets of the debtor corporation is no support for inclusion of old stockholders in the plan. * * * One of the purposes of 77B was to avoid the consequences to debtors and creditors of foreclosures, liquidations and forced sales with their drastic deflationary effects."
>
> **Id. p. 123.**

If what has been done here is lawful, grave uncertainty attaches to bonds. The fact that farmers fail to earn in depression years would be ground for impairing the bonds in spite of the great market value of their lands.

That debt destruction was not justified here was further demonstrated by the district's own books *which showed that in the five year period of default on its bonds, 1934, 1935, 1936, 1937 and 1938 this district added to its capital surplus more than the delinquent interest coupons amounting to $197,104.78 plus the sum of $103,000.00 which matured on bond principal.* It levied water tolls as the law permitted and its tax rate was so reduced that tax delinquency almost disappeared. It diverted its funds into capital investment and surplus cash. The marginal lands which were tax-deeded to the district and which are of substantial value and which are producing substantial rents, could be cancelled out of assets altogether and still the district produced and diverted into capital investments and surplus cash far more than the $197,000.00. This district, when tax delinquency was prevalent through all the rural sections of the state, went to the California Districts Securities Commission and obtained permission to levy a tax rate below bond service requirements. Authority was granted in accordance with Section 11 of the act fixing part of the powers of that commission. For over seven years, Section 11 of that act had been renewed at each session of the legislature. (For example, see Sec. 11, Cal. Stats. 1917, p. 491.) It is enacted as a moratorium statute. But the district, as it was empowered to do under Section 55 of the Irrigation District Act (Cal. Stats. 1911, p. 516) proceeded to levy water tolls, which, together with new taxes and some delinquent taxes provided more than what was required to meet all maturities

on its bonds. It paid off completely the money which it had borrowed to pay interest maturing on bonds prior to January 1, 1934. As stated funds were diverted into capital investments and surplus cash. That evidence also is perfectly clear and without contradiction.

The opinion of the Circuit Court of Appeals says that we complained that the district was able to raise money to invest in its own bonds. The opinion mentioned but the single fact that we pointed out—the fact that the district was carrying at face value bonds purchased and on which it had paid about ⅛ of the price. But that did not meet the argument as to what the district raised and the opinion wholly omits to mention increased capital surplus. It mentioned but a single item of the evidence, leaving it unrevealed that what the district did in fact provide, in the five years of default, was sufficient to pay interest on the bonds which interest amounted to $197,-104.78 and all or practically all the bond principal that matured and in addition the whole of the balance of a small debt that arose from earlier borrowing to make payments on the bonds. That small debt hung over from the preceding five years. Indeed in the preceding five years, the district made capital investments far in excess of any increase in indebtedness. It greatly increased its capital surplus in the preceding five years.

The Circuit Court of Appeals went further and actually justified this plan in part by our proof of the existence of private mortgages on the lands in the

district. It held this justified a smaller offer. That is error. Our proof was offered to show that Section 83 was unconstitutional in its application here, in that the bond lien, a higher lien, was being cut down to ease the burden of the landowner while leaving private mortgages unimpaired. The uncontradicted evidence in this case was that private mortgagees came forward during the depression and advanced money to meet taxes. That is, the mortgagees recognized their liens were inferior. This erroneous construction of Section 83 is alone sufficient to justify this Court's review. State law is of course against any such holding as to superiority of private mortgages and of course state law must control such a question.

A preliminary statement requires at least some additional details.

The district was organized in 1919 under the California Irrigation District Act of 1897 as amended. (Cal. Stats. 1897, p. 254.) (Petition R. 2, 3.) The district is a public political subdivision such as the Lindsay-Strathmore District, involved in *U. S. v. Bekins,* 304 U.S. 27, 58 Sup. Ct. 811, 82 L. ed. 1137. All its powers are governmental and all its property is public and it is held upon a trust, one purpose of which is to pay the bonded indebtedness of the district. And this trust attaches to tax-deeded land. See points 5 to 8 in

Provident Land Corp. v. Zumwalt, 12 Cal. (2d) 365, 85 Pac. (2d) 116.

The undenied allegations of the petition for composition showed: The district issued bonds in the

amount of $760,000.00 in 1919, the year in which the district was formed; that the bonds bore interest at 6 per cent per annum payable on January 1st and July 1st, that $733,000.00 of these bonds and interest from July 1, 1933 were unpaid when the district defaulted on its bonds; that the plan of composition required each bondholder to accept 75% of the principal of his bonds for the principal and unpaid interest and that this payment was to be made through a loan by Reconstruction Finance Corporation of $484,500.00 which would furnish 65.791% of the original principal, while 9.209% would be provided by the district.

As the loan resolution of the R.F.C. is dated February 17, 1937 (R. 194 and 195) and as the first interest bill on an advance of $410,468.94 figures interest from March 3, 1937 (R. 310) it is apparent that no payment was made on the plan until interest for 3⅔ years or 22% had accrued on the bonds. In fact the delayed offer was but slightly over 61% of the total of $1220.00 due on each bond *and by the time we had our final day in court* this plan was not a 50% plan.

The district's bonds began maturing in 1931, the schedule of maturities requiring total payments annually after that date of the sum from $52,600.00 to $62,000.00 over a period of 20 years. (R. 299.)

In 1929, the district started borrowing to pay part of its bonds maturities. (R. 251.) The amount unpaid on loan warrants at the end of each year varied. (R. 142, 143.) In the borrowing period from 1929 to 1934, the district levied a special assessment of $120,000.00 to buy land to provide more wells (R. 253) and

it incurred indebtedness of $23,827.00 in the purchase of water stock in the Peoples Water Company. (R. 252.) These were capital investments. Capital investment was certainly not less than any "permanent" general indebtedness of the district represented by loan warrants. (R. 252, 253, 254.) (R. 152, 153.)

In fact the amount of the annual borrowings were being reduced when the district quit paying interest on its bonds on January 1, 1934. As of the end of each of the preceding five years they were (see R. 142):

1929	$58,666.68
1930	55,166.70
1931	31,459.96
1932	18,673.67
1933	22,925.22

The court should keep in mind that in this period of temporary loans, the district increased its capital surplus. We shall later insert page 142 of the record which shows:

At the end of 1929	$267,748.37	capital surplus
At the end of 1933	436,469.91	" "
Increase	$171,721.54	

This took into consideration *all debts.*

This more than equalled the increase in tax certificates which on the same page are counted in assets.

Tax Certificates (R. 142)	
End of 1929	$ 14,048.27
End of 1933	110,620.67
Increase	**$ 96,572.40**

In other words counting the tax certificates as worthless (which they are not), it is clear beyond question that in this earlier 5 year period when this district claimed that it borrowed to pay on its bonds, it was increasing surplus.

The district failed to pay coupons falling due on its bonds on January 1, 1934, representing interest from July 1, 1933. At this time, $733,000.00 of bond principal remained unpaid (R. 4 and 142) and as mentioned, maturities of principal were occurring. Under orders of the California Districts Securities Commission, the district reduced its annual tax rate from $3.00 to $1.50 per $100.00. Part of these levies were for bond service. See bottom R. 288 and following. But the district placed no more money in its bond fund and it paid nothing more on its bonds after January 1, 1934, excepting coupons paid to R.F.C. cut from the bonds taken up.

Some time after the district quit paying on its bonds and after the enactment of Section 80 of the Bankruptcy Act on May 24, 1934 it asked its bondholders to take 59.95% of principal (R. 158), for what was due on their bonds. (R. 156.) This money was to be provided solely by the R.F.C. (See form of escrow or bond deposit agreement, R. 159 to 163.) The two-thirds consent was not obtained and the district promptly adopted its present plan under which the R.F.C. was to loan to the district part of the amount necessary to increase the offer to 75% of principal and the district was to supply the rest of the funds. The form of escrow instructions which acceptors were required to sign and leave with two

bank depositories are shown. (R. 236 to 244.) The banks were authorized to deliver the bonds to the R.F.C. on receiving payment from the sources indicated—a loan from the R.F.C. and a direct payment by the district. Over two-thirds of the bonds thus passed to the R.F.C. And we earnestly ask the court to note that at this stage when this district contemplated proceeding under Section 80, *these instructions recited that the signed instructions should be filed as the bondholders consent to the plan in a proceeding to be begun under Section 80.* (R. 237, mid page.) (R. 243, 244.) But Section 80 was invalidated in the *Ashton* case. When Section 83 was enacted all this was simply ignored and it was assumed that it could be claimed that the R.F.C. became the owner of the bonds taken up under the instructions and by its loan referred to. The district pleaded in its petition (R. 2 to 14) that it had consents over the necessary 51% on filing and that the R.F.C. *as the owner of 92½% of the bonds had given the two-thirds consent to the plan required by Section 83.* Section 83 says the consenters must be owners. A pledgee is not mentioned. Judge Yankwich sanctioned and the Court of Appeals sanctioned this about face and did this in the face of the California law that declared this dealing with the R.F.C. in this manner had to be a loan. If the R.F.C. became the owner of these bonds it would be such owner had it contributed but 1%.

The procedure here was utterly different from the practice followed in other cases and first contemplated

in this case. The district paid part of the price of the bonds.

When Section 80 was invalidated in the *Ashton* case on May 25, 1936, California passed an act to provide for the condemnation of irrigation district bonds at their market value. The act stayed all remedy on the bonds while condemnation was pending. (Act of March 26, 1937, Cal. Stats. 1937, p. 92.) Every local Superior Court judge before whom this act was tested, held it was legal. The cases had to be tried in the county where the district was situated. We mention this because of the evidence that the other side offered as to market price of the bonds. We point to what happened to irrigation district bonds; to the incessant delays that drove these bonds down so low that sales occurred at between 25 cents and 50 cents on the dollar. (R. 247.) The lack of true reliance on this California statute was shown by the fact that as soon as Section 83 was added to the Bankruptcy Act all proceedings under the state act were abandoned. This district had a suit filed under this act (R. 342 and 343) and it dismissed. (R. 348.) We respectfully request that this court remember that the word "hold-out" may also apply to skilled defaulting. Note what was done here. The California Districts Securities Commission was created on the assumption that it would protect both bondholders and irrigation districts. It fixes the tax rates of irrigation districts when serious tax delinquency occurs. The R.F.C. was surprised at the way in which this district was able to make its reports. It had written to the dis-

trict—"We generally require that such funds be apportioned equitably between the Bond Fund and the General Fund". The reply which was sent to the R.F.C. read as follows (R. 287):

> "It is the opinion of Mr. Bonte, Executive Secretary of the California Districts Securities Commission and of our attorney, Mr. Chandler, that in view of the suits filed in the Superior Court by Hold-Out Bond Holders, that we should not have any money in the Bond Funds at this time."

For five years this district kept all bond fund money out of the bond fund, using that very money in the campaign to buy up bonds. (R. 143 and 321.) And as will be shown, it used it also to pay coupons presented by the R.F.C. only.

On September 12, 1938, the district filed its petition under new Section 83 (R. 2 to 15) attaching thereto the consent of the R.F.C., as Exhibit B. *But as will be shown the R.F.C. did not in this case become the owner of the bonds, did not buy them up independently.*

Petitioners here, bondholders, answered this petition pleading various defenses. (R. 16 to 46.)

The further references to the record supporting each point here relied on will be given in the brief which will follow.

QUESTIONS INVOLVED AND REASONS FOR ISSUANCE OF WRIT.

The public question involved is whether bonds of a taxing agency mentioned in Section 81 may under

Section 83 of the Bankruptcy Act be threatened with impairment, although the security behind the bonds is adequate, because that agency has had difficulty in meeting maturities on its bonds and in paying for improvements which it has undertaken.

The *main* legal questions involved are:

FIRST: As construed and applied here does not Section 83 violate the 5th amendment to the Federal Constitution by taking petitioners' property without due process of law and without just compensation?

SECOND: Is Section 83 as construed and applied here within the bankruptcy power? (Art. I, Sec. 8.)

THIRD: Have the words "fair and equitable" in Section 83(e) been correctly construed and applied?

Other legal points are presented which are just and well founded. We may state the determinations which should be made by this court in the following form:

1. This court should determine (in accordance with what it did in the *Los Angeles Products Co.* case) whether a plan is "fair and equitable" under Section 83 which passes to landowners in an irrigation district whose lands were on their own vote made security for the district's bonds nine-tenths of that security. May this be done in the face of California law that a bond is practically a perfect security when the equity in the security is but 40%?

2. Is not Section 83 void in its application here, in that it throws the whole burden of reducing the land burden on the district's bondholders, leaving unimpaired the tax "liens" of overlapping districts and private mortgages.

3. As the necessary two-thirds consent to a plan can, under Section 83 be given only by bond owners and as the R.F.C. was but a pledgee of the bonds taken up because of the district's investment therein, was consent of the R.F.C. to the plan sufficient?

Does the word "owned" in Section 83 include a pledge?

4. Is not a plan discriminatory which treats creditors differently? If the R.F.C. was a bondholder was not this plan unequal and discriminatory in that the R.F.C. was to receive new bonds and 4% on its advances between the time of its advances and the time of putting the plan into effect, whereas cash only is offered to dissenters? As the district retained the consideration and paid no interest on what it and the R.F.C. did not advance while the dissenting bondholder was having his day in court, does not fairness require payment of the interest that would have been paid to the R.F.C. if the dissenter had accepted?

5. In view of the latest holdings in California as to the public character of an irrigation district, has this court jurisdiction?

None of these contentions was upheld. In fact, the fact the land was mortgaged, was by the Circuit Court of Appeals given as an excuse for the plan.

THIS COURT HAS JURISDICTION.

Judicial Code, Section 240(a);
28 *U. S. C. A.,* Section 347(a);

Magnum Import Co. v. Coty, 262 U. S. 159, 43 S. Ct. 531, 67 L. ed. 922.

The brief will follow.

WHEREFORE, petitioners respectfully pray the writ of certiorari issue out of and under the seal of this honorable court, directed to the Honorable Circuit Court of Appeals for the Ninth Circuit in San Francisco, requiring that court to certify and send to this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered 9293 on its docket and entitled "A. A. Newhouse, J. R. Mason and Mary E. Morris, Appellants, v. Corcoran Irrigation District, Appellee" and that the said decree of said court may be reversed by this honorable court and that your petitioners may have such other relief in the premises as to this honorable court may seem meet and just.

Dated, Berkeley, California,
November 18, 1940.

A. A. NEWHOUSE,
J. R. MASON,
MARY E. MORRIS,
Petitioners.

By RALPH R. ELTSE,
W. COBURN COOK,
Attorneys for Petitioners.

GEORGE CLARK,
Of Counsel.